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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re Z.R., a Person Coming Under the  
Juvenile Court Law.

DEL NORTE COUNTY DEPARTMENT  
OF HEALTH AND SOCIAL SERVICES,

Plaintiff and Respondent,

v.

J.R. et al.,

Defendants and Appellants.

A139174

(Del Norte County  
Super. Ct. Nos. JVSQ12-6041,  
JVSQ12-6042, JVSQ12-6043, JVSQ12-  
6044, JVSQ12-6045, JVSQ12-6046,  
JVSQ12-6047, JVSQ12-6048, JVSQ12-  
6049)

After the termination of reunification services and on the eve of a selection-and-implementation hearing to consider permanent plans for the nine dependent children of appellants J.R. (mother) and B.R. (father), mother filed petitions requesting that services be reinstated or the children be returned to her. The juvenile court denied the requests without holding an evidentiary hearing under Welfare and Institutions Code section 388,<sup>1</sup> and it then proceeded to terminate mother and father's parental rights as to all nine children. In this appeal, the parents challenge only the denial of mother's section 388 petitions. We affirm.

<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

I.  
PROCEDURAL AND FACTUAL  
BACKGROUND

This is the third time we have considered these dependency proceedings. Respondent Del Norte County Department of Health and Human Services (Department) filed nine separate juvenile dependency petitions in March 2012 alleging that the parents had abused the children. The juvenile court concluded that all nine minors were children described by section 300, sustaining allegations that the parents' teenaged daughter (their oldest child) was sexually abused by father, that the other children were at risk of sexual abuse and emotional harm, that the parents had harmed the children with behavior related to an unorthodox religious belief system, that mother's depression and post-traumatic-stress disorder (PTSD) impaired her ability to raise the children effectively, and that the minors were at risk of educational neglect. The court later adjudged the minors to be dependent children, ordered that they remain out of the parents' physical custody, and ordered that family reunification services be provided. In an unpublished opinion, this court affirmed the dispositional orders, rejecting the parents' argument that the juvenile court failed to comply with the notice provisions of the Indian Child Welfare Act of 1979 (25 U.S.C.A. § 1901 et seq.). (*In re Z.R.* (Sept. 12, 2013, A135645, A136929).)

We previously summarized the parents' efforts to reunify with their children. (*J.R. v. Superior Court* (May 8, 2013, A137755) [nonpub. opn.]<sup>2</sup> We quote from this summary at length because it touches on the issues raised in the current appeal: "The parents, and particularly mother, worked to achieve the objectives of their court-ordered case plan, but their success was limited. In October [2012], the parents completed a certified nursing assistant training program and were searching for work. Although the parents lived together in the family home at that time, mother told the social worker that father was moving out so that the juvenile court would permit the return of the minors to

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<sup>2</sup> In a prior order, we granted mother's request to take judicial notice of the appellate records in *In re Z.R.*, *supra*, A135645, A136929, and *J.R. v. Superior Court*, *supra*, A137755.

her. Mother was receiving counseling, but she complained that she was misdiagnosed as having depression and PTSD. She continued to insist that father did not abuse her, even though several of the older children reported that father had been physical with mother, and community members reported that father had been seen ‘berating [mother] in a public place for a significant amount of time.’

“Both parents completed a parenting course and were undergoing counseling. They acknowledged making poor decisions in the past when disciplining their children, and they stated they had decided to no longer use corporal punishment. Mother attended courses relating to domestic violence education and child abuse prevention. But these services did not appear to result in any behavior or attitude change. The social worker testified [at the six-month review hearing] that mother could ‘go through the motions of completing [a parenting] class,’ ‘do the homework,’ and ‘fill a seat,’ but did not necessarily benefit from the class. According to staff who led domestic violence courses that mother attended, mother ‘did not approach the classes as a victim in her marriage or in her relationship. It was more of she was a victim of the system and her children.’

“The Department remained concerned that although the parents had worked to improve their parenting skills and to correct the safety hazards in and around their home, they had done nothing to address concerns related to sexual abuse. The social worker stated that ‘given the further disclosures of the children [of violence and sexual abuse], the Department is more concerned than ever about the children’s ability to be safe in the home of their parents.’ Father failed to complete a ‘psychosexual assessment,’ and the Department was concerned that he was ‘purposely hiding’ information. Mother was described by her children as a ‘child herself’ who was ‘controlled and manipulated’ by father.” (*J.R. v. Superior Court, supra*, A137755.)

In a review report submitted in advance of a six-month review hearing, the Department recommended that reunification services be terminated and that the juvenile court schedule a selection-and-implementation hearing under section 366.26. This court has previously summarized the evidence presented at the hearing, and we again quote at length from our previous opinion: “[The social worker testified] that although mother

had participated in various services provided to her and had tried to implement new parenting techniques, she lacked insight into the danger father posed to her children, and she had ‘taken more of the blame onto herself and ha[d] protected her husband.’

“The social worker believed that the parents had not made the changes necessary to parent their children properly, and she did not think that it was probable they would be able to do so in the next six months, based in part on father’s failure to participate in a psychosexual assessment ordered by the court and both parents’ unwillingness to address the issue of domestic violence. According to the social worker, the minors did not want to return home, they would not feel safe doing so, and they believed their parents were ‘putting on a front.’ Because mother had demonstrated no insight into father’s power over her and had not changed her behavior despite having participated in services, the social worker did not believe that additional services would be helpful. The worker also testified that it would be difficult for mother to handle all nine minors on her own, and there were concerns about ‘her co-dependence issues with the father and her . . . inability to protect’ her children.

“Mother testified that she had consistently participated in the mental health portion of her case plan, but she had concerns that her therapist was ‘biased,’ had not supported her ‘at all,’ and was taking the word of her children and the social worker over hers. She claimed that the psychologist who administered a psychological test faked the results by writing down answers different from those she provided. Mother described herself as ‘very independent’ and ‘very defensive,’ and she testified that although her own father abused her, she currently would ‘never allow anyone to abuse me or the children.’

“Father testified that he had moved out of the family home out of respect for the juvenile court’s requirement that he stay away from the residence for the safety of his children. Mother insisted that although she loved father, she would continue to live apart from him in order to have her children returned to her.” (*J.R. v. Superior Court, supra*, A137755.)

At the conclusion of the contested six-month review hearing, on January 25, 2013, the juvenile court terminated reunification services and set a selection-and-

implementation hearing (.26 hearing). We denied mother's petition for extraordinary writ review. (*J.R. v. Superior Court, supra*, A137755.)

On May 14, 2013, the Department filed a report in advance of the .26 hearing, recommending that the parents' parental rights be terminated as to all nine children and that the juvenile court adopt a permanent plan for adoption. The oldest daughter was placed with a couple in Oregon, five of the children were placed together with a family friend, and the parents' oldest son (their fourth-oldest child) was placed together with the two youngest children (a girl and a boy) in a licensed foster home. The children's current caregivers had expressed a desire to adopt them.

Supervised visitation with the children continued, but the visits were reported to be "a bit hostile at times." The parents were observed trying to convince their children to "change their stories." The social worker reported that "if one of the kids mentions something that they like or reminisce[] about something positive that happened in the past, the parents encourage the children to tell the Court the truth and that they would like to come home." Mother had recently "desperately encouraged" her then-six-year-old son "to not listen to the older children and to tell the judge that he wants to come home and they are good parents." Mother appeared to find it difficult to "contain herself" even after she was asked to stop discussing such matters with her children.

The social worker further reported that circumstances in the family had not improved and that "if anything the level of contention has escalated, as the children have become more firm in their opinions and the parents have not changed theirs." Even as more stories of abuse and neglect surfaced, the parents continued to insist that their oldest child "started all of this because she is mentally ill and she wanted to live with" her then-current caretakers. The parents perceived themselves as victims of their children and "the system," and they were convinced that the social workers assigned to their case had received bonuses for detaining their children and arranging for their adoptions. And although the parents had stated they were no longer living together, the social worker reported it was "clear that they are very much together and have no intentions of

emotionally separating themselves from one another,” and the worker had received reports that mother was expecting her tenth child with father.

On May 23, 2013, the day before the scheduled .26 hearing, mother filed a request under section 388 to change the court’s previous order terminating reunification services and setting the .26 hearing.<sup>3</sup> She requested that the court “[r]einstatement reunification services or return child to mother” in each child’s case except for the oldest child’s, in which she requested only a reinstatement of services. Mother alleged in the petitions that she was “the child’s mother with a long term bond. If [she] protects the children from father, their [*sic*] are no other issues to separate mother and children.” The minors’ attorneys opposed the requests.

Mother submitted a declaration in support of her petitions attesting that in order to protect her children, she was willing to live separately from father and never allow the children to have contact with father unless permitted by the court. She further attested that she had attended “mental health” each week since the termination of her reunification services in January, and she had not missed any scheduled visits with her children. Finally, mother attested that she had “completed or nearly completed” four programs on her own: (1) domestic-violence classes, (2) “Mend/Wend classes,” which required that she complete “only 2 more classes and 3 papers,” (3) two classes in early childhood education, and (4) her second parenting course, which required that she complete two additional classes. Attached to her declaration were two certificates indicating she had completed courses on September 27, 2012 (before reunification services were terminated); one certificate indicating that as of March 21, 2013, she had attended 23 of 23 available sessions of a treatment course related to PTSD and substance abuse; and syllabi for the childhood education classes she had taken.

At the beginning of the .26 hearing, the juvenile court indicated that it intended to deny the section 388 petitions as to all nine children without an evidentiary hearing, and it provided a lengthy explanation for the denial. The court stated that the petitions “made

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<sup>3</sup> An essentially identical petition was filed in all nine cases.

no showing whatsoever that mother has gained insight into the problems that led to the removal of the children and termination of reunification services.” Although mother presented evidence she continued to take parenting classes and visit with her children and that she was willing to live apart from father, this was not evidence of changed circumstances, according to the court, because neither lack of visitation nor failure to participate in services was a reason relied upon in terminating services. As for whether mother’s petitions showed that a change in court order would be in the minors’ best interests, the juvenile court found that mother made only “a conclusory statement” that it would be in their best interests to reinstate services because of a “strong bond” with the children, an issue that was not addressed in mother’s declaration and that conflicted with the social worker’s report stating that the older children generally agreed with being adopted and that the younger children were doing well in their placements. The court concluded that “[i]t appears that there is no longer reason to believe that a positive nurturing parent/child relationship exists between the children and their natural parents.”

Mother’s attorney, who was appearing by telephone, answered “[n]o” when asked if he wanted to be heard on the denial of the section 388 petitions. The juvenile court denied the petitions, finding that there had not been a change in circumstances and that granting the petitions would not be in the children’s best interests.

Mother then asked to address the juvenile court, which the court allowed. She made a lengthy statement about her love for her children, her relationship with father, and choices they had made regarding parenting their children. Mother suggested that her oldest child, teenaged daughter M., fabricated the “sexual allegations” against father, stating, “I have proof that she [M.] didn’t do these things [with father]. And I have proof on a lot of—that he didn’t do this. And I have . . . proof on a lot of things, and I really wished that I could have expressed some of that.” Mother told the juvenile court that her then-six-year-old son (the same son mother reportedly urged during visits to change his story) had told her, “Mama, sit down. I’ve got something very important to tell you. M[.] told us to lie and say that papa beat us. But he’s not beat us. I love papa. I love you. And I want to come home.” Mother also claimed that her youngest child, a then-

three-year-old boy, had cried and said, “I love you, papa, I love you, mama. I want to come home. I don’t want to go [with my foster mother]. I want to come home.” She acknowledged that she loved father and explained that “he never hurt me” and “never really hurt the children,” but she again said she would live apart from him, this time at an apartment complex with cameras (to monitor that father not enter the property) and with thin walls (apparently, so that other residents could report if she was yelling at her children). Mother concluded, “Please, we just ask that you at least give—give at least me a chance with the three younger ones. I can handle the three younger ones.”

After hearing further argument about the Department’s recommendations for the minors, the juvenile court terminated mother and father’s parental rights as to all nine children and placed them up for adoption. Mother and father timely appealed.

## II. DISCUSSION

Mother (joined by father, who did not file a separate brief) argues that the juvenile court erred in denying her section 388 petitions without holding an evidentiary hearing. Section 388 provides that the juvenile court may change or set aside a prior court order where there is a “change of circumstances or new evidence,” and the proposed change would be in the minor’s best interest. (§ 388, subd. (a)(1).) A parent need only make a prima facie showing of these two elements to trigger the right to a hearing on a section 388 petition, and a petition for modification must be liberally construed in favor of its sufficiency. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806; Cal. Rules of Court, rule 5.550(a).) To be entitled to a hearing, the parent need only show “ ‘probable cause’ ” and is not required to establish a probability of ultimately prevailing on the petition. (*In re Aljamie D.* (2000) 84 Cal.App.4th 424, 432; *In re Jeremy W.* (1992) 3 Cal.App.4th 1407, 1414.) Still, the court may deny the petition without a hearing if the petition fails to state a change of circumstances or new evidence that may require a change of order. (Cal. Rules of Court, rule 5.570(d)(1).) The prima facie showing is not made unless the facts alleged in the petition, if supported by evidence found true at a hearing, would sustain a favorable decision. (*Zachary G.*, at p. 806.) The petition may

not be conclusory, and the parent must provide specific allegations describing the evidence constituting the alleged changed circumstances and new evidence. (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.) This court reviews a juvenile court's decision to deny a section 388 petition without a hearing for abuse of discretion. (*In re Jamika W.* (1997) 54 Cal.App.4th 1446, 1450.)

We agree with the Department that the juvenile court here did not abuse its discretion in denying the petitions without a hearing. As for demonstrating changed circumstances, mother failed to show anything new had transpired since the termination of reunification services that would support a change in court order. Mother attested that she had continued to participate in programs aimed at improving her parenting skills and mental health, continued to visit with her children regularly, and was willing to live apart from father to protect her children. This is consistent with evidence that was presented at the six-month review hearing, when the juvenile court considered evidence that mother participated in services, including therapy, but appeared to be “go[ing] through the motions” and was not necessarily benefiting from the services. Mother specifically testified at the hearing that she was willing to live apart from father in order to have her children returned to her, consistent with what she later attested in support of her section 388 petitions. As the juvenile court made clear in denying the section 388 petitions, the main reason the court terminated reunification services was that mother lacked insight into the problems that led to dependency. Neither mother's petition nor her declaration indicated any change in that regard. (*In re Zachary G., supra*, 77 Cal.App.4th at p. 806.)

We question whether the juvenile court truly denied the petitions “ex parte,” as mother claims. At the hearing where the juvenile court denied the petitions, the court first invited argument on the issue and also permitted mother to make a statement. Although the hearing was not evidentiary in nature, this amounted to an opportunity for mother to make an offer of proof that would justify an evidentiary hearing. (*In re Edward H.* (1996) 43 Cal.App.4th 584, 591 [statements at hearing confirmed that “no rational purpose would be served by an evidentiary hearing”]; Seiser & Kumli, Cal.

Juvenile Courts Practice and Procedure (2013 ed.) Supplemental and Subsequent Petitions, § 2.140[2], p. 2-441 [though not required, allowing argument before denial of evidentiary hearing under § 388 ensures juvenile court makes informed decision].) Far from showing she had gained insight into her family's situation, mother's unsworn statements at the hearing showed that she continued to blame her oldest child, who she accused of lying; that she considered the social worker to be a "manipulator" who turned her children against her; and that she did not believe father had harmed the children. Given this continued lack of insight, the juvenile court did not abuse its discretion in denying an evidentiary hearing. (*Edward H.*, at p. 591.)

On appeal, mother summarizes at length the evidence favorable to her that was presented *before* the termination of reunification services, but this necessarily falls far short of establishing changed circumstances *after* termination. In terms of new allegations, she claims that she expressed "without equivocation" in her petitions that she would protect her children from father, but again, she said the same thing at the six-month review hearing where the juvenile court terminated services. Given this inadequate showing, this case is easily distinguishable from *In re Aljamie D.*, *supra*, 84 Cal.App.4th 424, upon which mother relies. There, and unlike here, the social services department *conceded* that the parent had made out a prima facie case of changed circumstances, based on the completion of "numerous educational programs and parenting classes" and on the fact that the parent had tested clean in random, weekly drug tests for more than two years. (*Id.* at p. 432.)

As for whether a change in court order would be in the minors' best interests, mother likewise failed to make a prima facie case. (*In re Zachary G.*, *supra*, 77 Cal.App.4th at p. 806 [§ 388 contemplates prima facie showing *both* of changed circumstances *and* that the change would be in the child's best interest].) Mother's petitions alleged that she and her children had "a long term bond"; however, she did not address this issue in her declaration. (Cf. *In re Aljamie D.*, *supra*, 84 Cal.App.4th at p. 432 [children repeatedly made clear they wanted to live with their mother].) Mother claims on appeal that this allegation was sufficient to trigger the need for an evidentiary

hearing, but we disagree. “If a petitioner could get by with general, conclusory allegations, there would be no need for an initial determination by the juvenile court about whether an evidentiary hearing was warranted. In such circumstances, the decision to grant a hearing on a section 388 petition would be nothing more than a pointless formality.” (*In re Edward H.*, *supra*, 43 Cal.App.4th at p. 593.)

We stress that at this stage of the proceedings, after termination of reunification services and on the eve of the .26 hearing, the focus of the proceedings is shifted from reunification of the family to the needs of the children for permanency and stability. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 308-309; *In re Anthony W.*, *supra*, 87 Cal.App.4th at pp. 251-252; *In re Edward H.*, *supra*, 43 Cal.App.4th at p. 594.) The cases upon which mother relies, decided in the context of review hearings where return of children to their parents was mandatory absent a sufficient showing of detriment by the social services agency, thus are inapposite. (*Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1748; *In re Heather P.* (1988) 203 Cal.App.3d 1214, 1227, overruled on another ground by *In re Richard S.* (1991) 54 Cal.3d 857, 866, fn. 5.) Under the circumstances of this case, delaying permanency for the minors to allow additional reunification services for mother would not promote the children’s best interests. The juvenile court thus did not abuse its discretion in denying the petitions.

### III. DISPOSITION

The orders denying mother’s section 388 petitions are affirmed.

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Humes, J.

We concur:

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Ruvolo, P.J.

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Reardon, J.